Before the
Federal Communications Commission

In the Matter of	**)**	**GN Docket No. 10-127**
Framework for Broadband Internet Service	**)**	

REPLY COMMENTS OF THE CONSUMER FEDERTION OF AMERICA AND CONSUMERS UNION

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In CFA's initial comments we outlined the historic, technology, economic, legal and public policy reasons why the FCC should correct the misclassification of mass market, high-speed data transmission (broadband Internet access service) as an information service and return it to its proper classification as a telecommunications service. We see nothing in the initial comments to dissuade us from that view. The increasingly desperate attempts by the dominant incumbents to prevent the FCC from writing such an order affirm that view. In these comments we examine one indicator of this desperation – the self-proclaimed "principled compromise" put forward as a legislative framework for network neutrality. If it is a compromise, it a deal between two of the dominant incumbents in the broadband access space about how they, and others like them, should be allowed to carve up the Internet.

The Google-Verizon framework for network neutrality has ignited a firestorm of criticism and skepticism. The complaints are well-deserved. The framework sacrifices the public interest principles that governed telecommunications for a century in the U.S. on which the Internet was built to maximize the private profit opportunities of the dominant players in the broadband market. The only public service the proposal provides is to offer insight into how bad things will be if the FCC does not assert jurisdiction over broadband Internet access service.

The Google-Verizon Framework for Carving up the Internet

The framework would destroy the fundamental characteristic of the Internet ecology – seamless connectivity from end-to-end – that has made it the most consumer-friendly, citizen-friendly and innovation-friendly communications environment in history. As shown in the following exhibit, tThe proposal carves the Internet into neighborhoods defined by technologies and regulatory regimes and allows private parties to further subdivide the neighborhoods into gated communities and ghettos, leaving the FCC with little or no power to prevent discrimination. This is certainly an environment in which Google and Verizon would thrive, but their profit will come at the expense of consumers, competition and the public interest.

HOW THE GOOGLE-VERIZON FRAMEWORK CARVES UP THE INTERNET

	WIRELESS	ADDITIONAL WIRELINE DIFFERENTIATED SERVICES	TRADITIONAL WIRELINE MANAGED SERVICES	THE "PUBLIC" INTERNET
Gated Communities exceptions				
Standard/Obligations	**The whole space** **Transparency**	**Distinguishable in scope and purpose** **Not threaten meaningful availability of access or evade consumer protections**	**No meaningful harm to competition or users** **Congestion** **Security** **Harmful traffic** **Service quality** **Consumer choice** **Priority traffic**	**Transparency** **Lawful content** **Lawful apps & services** **Legal devices** **Access for disabled by private action only** **High cost for unserved** **Reform intercarrier Compensation**
Enforcement Mechanism	**Report to Congress**	**Report**	**Case-by-case complaints only** **$2million fines, no rulemaking** **Arbitration based on Int'l Std. body, no private right of action**	**Case-by-case complaints only** **$2million fines, no rulemaking** **Arbitration based on Int'l Std. body, no private right of action**

As shown in the following exhibit, there would be four different types of services provided. In three of these – wireless, additional, differentiated services, and managed services – there would be little effective oversight over discrimination. In the fourth, the FCC would oversee a process in which private parties would bear the burden of demonstrating discrimination. The carriers could claim any of half a dozen exceptions. The penalty for undue discrimination would be a maximum of $2 million, which will have little effect on companies that earn tens of millions of dollars a day.

While the blog post claims that "paid" prioritization would be banned, it is not clear that this is the case and it is not at all clear that the network operators would be prevented from demand equity ownership of these services. The proposal is silent on the critical question of whether the network owners would be allowed to offer exclusive deals to application developers in the wireless and differentiated service areas. Consequently, there are no rules governing how applications developers would gain access to the privileged class of people who are allowed enter into the world of the wireless and "differentiated" services. This is kind of discrimination has been at the core of the cable TV model for decades.

Google-Verizon give examples of health care monitoring, smart grid or educational services that might be included in the differentiated service category, but these services can be and have been provided under the existing regulatory regime. If this were all the network operators are worried about, a public service exception to the existing obligations of non-discrimination would be easy to craft.

Controlling the Flow of Innovation

The network owners would control the flow of innovation and services. This control would be entirely unfettered in the wireless space, and substantially unfettered in the area of differentiated services. In these two spaces, applications developers would have to get permission or make a deal with the network owner to put a product before the public. Even in the managed service area it would be difficult for developers to have confidence that their applications would not be declared out of bounds after the fact by the network owner because of some violation of service quality, security, harm to the network, or poorly defined issues of congestion or consumer choice. This is simply not how the Internet has worked. The Internet's greatest strength was the ability to innovate without permission made possible by the principle of nondiscrimination that the FCC took from voice telecommunications and applied to data transmission in the late 1960s in the Computer inquiries. Abandon that principle and you destroy the essence of the Internet.

Undermining Traditional Broadband Internet Access Service and the goals of the Communications Act

The inevitable outcome of creating different spaces with different regulatory obligations and isolating "traditional" broadband Internet access service in a regulatory ghetto would be for the carriers to focus their investment and development activities on the gated communities in the wireless, differentiated space, while they managed the "traditional" space to ensure that the differentiated space thrives. The "traditional" Internet will shrivel. At the same time, scope of differentiated and managed services will expand because of the extreme difficulty of

demonstrating discrimination and the minor consequences of violating the anti-discrimination prohibition; consequently, the "traditional" Internet will shrink.

The brunt of the shriveling and shrinking of the "traditional" Internet will fall on those aspects of telecommunications policy that have been performing worst. The proposal acknowledges this, but deals with it very poorly. The problem of unserved areas is to be solved by redirecting the high cost fund, but two-thirds of those in the U.S. without broadband reside in areas where the service is available, but too expensive, or unattractive to the local population. The incumbents do not want to admit the problem or invite more competition. The Google-Verizon framework fails to address it.

The framework acknowledges the problem that people with disabilities have in gaining access to the broadband Internet, but declares that the private sector should be left to address the issue. A decade and a half after the passage of the Telecommunications Act of 1996 and two decades after the passage of the Americans with Disabilities Act, the private sector has failed to address the problem. The authority and power to address the problem should be strengthened, not eliminated from the Communications Act.

The framework will make it hard for the nation to deal with the public safety challenges involved in building a national communications network for first responders. By establishing the wireless as an unregulated space, the framework will undermine the FCC's ability to provide for public sector communications.

The proposal does not address the privacy concerns raised by the assault on FCC authority to protect consumers under Title II.

Abdication of Prudential Regulation

The proposed framework thoroughly undermines the FCC authority to oversee corporate behavior in these product spaces. The network operators will have vast discretion to self-define the scope of the exceptions to nondiscrimination.

It removes the FCC's rulemaking authority and replaces it largely with self-regulation.

Requiring network operators to implement practices that are "technically sound" and requiring the FCC to give deference to the decisions or opinions of "the technical requirements, standards, or best practices adopted by independent, widely recognized Internet community governance initiative or standard setting organization," makes U.S. policy dependent on the political process of a those international bodies. The U.S. public is thoroughly disenfranchised in this process.

The case-by-case complaint driven enforcement process in which parties "would be encouraged to use non-governmental dispute resolution processes established by independent, widely-recognized Internet community governance alternatives" means that only the rich and powerful will have a chance at getting justice.

The claim that this would result in greater oversight is ludicrous. It calls to mind the fateful decision of the Securities and Exchange Commission in 2004 to abandon direct regulation

of large bank capital requirements. The banks argued that the old rules were unnecessarily restricting their ability to do business and that the banks' own mathematical models could better evaluate and assign risk. The SEC abandoned it rules that required the banks to keep at least one dollar of liquid capital for every twelve dollars of loans, and let banks set their own requirements, assuring the public that it would be looking more closely over the shoulder of the banks. The five big banks proceeded to run their loan to capital ratios from 12-1 to 30-1 or 40-1 and the capital on hand was much lower in quality. Three of the five big banks disappeared and the irresponsible behavior contributed greatly to the financial sector meltdown. The public has lost trillions of dollars in their retirement accounts and housing values.

The dramatic reduction in FCC authority, the vague harm standards, the long list of exceptions to the principle of nondiscrimination and the deference to industry self-regulation will make it impossible for the FCC to prevent abusive conduct by the largest industry actors. We have learned from the Enron loophole in the Commodity Futures Modernization Act, the repeal of Glass Steagall by the Financial Service Modernization Act, and the abdication of capital regulation by the SEC, that corporations cannot trusted to behave in responsible ways. We need prudential regulation to channel their activities that promote the public interest.

Cable-izing the Internet

The harm to the public interest from corporate abuse of self-regulation may not be as spectacular as the California black out, the financial meltdown, or the BP oil spill, but it will be substantial. This is a critical moment for defining the future of the Internet. Cable operators, who are also the dominant broadband Internet access providers are moving aggressively, in lock step, to squelch the possibility of Internet TV by requiring consumers to prove that they have are already cable or satellite subscribers before they are allowed access to the full range of video content available on the web. This extends the no-compete arrangement that cable operators have long adhered to into cyberspace. It makes Internet TV another tier in the ever expanding cable bundle. Cable operators are also seeking exclusive deals for Internet rights, to ensure that content is only available behind their pay walls. The Google-Verizon framework would undercut the ability of federal authorities to prevent this illegal market division. While the blog post puts traditional multichannel video programming service in the traditional category, it is silent on the issue of Internet TV, which the network operators will certainly argue is an additional, differentiated service that is not subject to even the weak nondiscrimination provision of the Google-Verizon framework.

Conclusion

The Google-Verizon deal is a self-serving proposal by two of the dominant incumbents in the broadband market to promote their private business interests at the expense of the public interest. The network owners would be given vast new profit opportunities and excused from the public interest obligations that have governed the telecommunications network for exactly one hundred years. Large, incumbent applications service providers, like Google will be in the best position to cut the deals in the wireless and “differentiated” product spaces. It is headed in the wrong direction. The

FCC should classify mass market, high-speed data transmission as a telecommunications service under Title II and then develop the light-handed regulation necessary to strike a proper balance between the public and private interests.